

Message Text

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EXDIS

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SUBJECT: US-PANAMA TREATY NEGOTIATIONS: NEGOTIATION OF STATUS OF
FORCES AGREEMENT--REPORT OF DEVELOPMENTS

S/S-O PASS TO AMABSSADOR KOREN, CHAIRMAN, PANAMA CANAL NEGOTIATIONS
WORKING GROUP, DEPARTMENT OF DEFENSE, FROM MINISTER BELL

I. GENERAL COMMENTS

THE ENTIRE PANAMA NEGOTIATION HAS BEEN CONDUCTED WITH ALL
DELIBERATE SPEED AND ATTENTIVENESS TO PANAMA'S HYPERSENSITIVITY TO
ANYTHING SMACKING OF "SOVEREIGNTY."

THE SOFA NEGOTIATION IS NO EXCEPTION.

SATISFACTORY PROGRESS HAS, HOWEVER, BEEN MADE. THAT IS IN PART
THE RESULT OF OUR HAVING MADE IT PLAIN TO PANAMA THAT THE UNITED
STATES NEGOTIATORS ARE NOT IN A POSITION TO MOVE SIGNIFICANTLY
TOWARD THE SECOND AND FINAL "POLITICAL TRANSACTION"
(TRADE-OFFS) INVOLVING COMPENSATION, LAND-USE, DURATION AND
EXPANSION) UNTIL THE FIRST SUCH TRANSACTION (OPERATION, JURISDICTION
AND DEFENSE-PLUS-SOFA) IS COMPLETE

IN GREATER PART, HOWEVER, IT IS THE RESULT OF THE PATIENCE,

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DIPLOMACY AND SKILL OF THE DEFENSE DEPARTMENT REPRESENTATIVES ON

OUR TEAM--MR. BARRINGER, LT. COMMANDER JOHNSON AND CAPTAIN SMITH. THE AMBASSADOR AT LARGE WOULD LIKE YOU TO MAKE HIS RESPECT AND APPRECIATION FOR THEIR SUPERB PERFORMANCE, UNDER MOST TRYING CIRCUMSTANCES, A MATTER OF RECORD.

THERE FOLLOWS A DESCRIPTION OF THE TECHNICAL EVOLUTION OF THE MAJOR POINTS IN THE SOFA NEGOTIATION, WHICH IS TO BE CONTINUED IN WASHINGTON NEXT WEEK.

THE AMBASSADOR FULLY SUPPORTS THE POSITIONS WHICH THE UNITED STATES TEAM HAS ADOPTED IN THE COURSE OF THIS UNIQUE--TO REPEAT, UNIQUE--SOFA NEGOTIATION. IN HIS VIEWS THOSE POSITIONS PROTECT OUR BASIC INTERESTS.

II. TECHNICAL DESCRIPTION

1. AFTER RECEIVING US DRAFT OF JANUARY 10, GONZALEZ-REVILLA AND ESCOBAR PRESENTED ON JANUARY 12 A PANAMANIAN COUNTERDRAFT, WHICH SUBSTANTIALLY PUT FORWARD AGAIN THE EARLIER VERSION THEY HAD TABLED IN WASHINGTON ON DECEMBER 14. INITIAL DISCUSSIONS REVEALED THAT A NUMBER OF THE PROBLEMS PERCEIVED BY BOTH SIDES WERE THE RESULT OF TRANSLATION DIFFICULTIES. TAKING THIS INTO ACCOUNT, WE PROCEEDED TO A DETAILED DISCUSSION OF THE SOFA TEXT. FOLLOWING IS A SUMMARY OF THE MAJOR POINTS INVOLVED. THE REFERENCES ARE TO ARTICLE TITLES.

2. INTRODUCTION-PANAMA INSISTED ON THE INCLUSION OF SPECIFIC MENTION OF THE CANAL TREATY AS THE PURPOSE FOR PRESENCE OF US FORCES. WE BROADENED THIS REFERENCE TO OTHER PURPOSES AGREED BETWEEN THE GOVERNMENTS. AT PANAMA'S INSISTENCE, THIS RATHER CUMBERSOME RECITATION NOW APPEARS SEVERAL TIMES LATER AS WELL, PARTICULARLY IN ARTICLE I.

3. DEFINITIONS-(ARTICLE I). DEFENSE SITES ARE NOW DEFINED AS "AREAS, AND THE INSTALLATIONS WITHIN THEM." THE CIVILIAN DUAL NATIONAL PROBLEM WAS HURDLED BY INCLUSION OF ALL THOSE TO WHOM US PASSPORTS HAVE BEEN ISSUED. PANAMA INSISTED ON INCLUDING REFERENCE TO AGREED FORCE LEVELS IN THE DEFINITIONS OF MEMBERS OF THE FORCES AND CIVILIAN COMPONENT. WE RESISTED, ARGUING THAT THE SOFA NEGOTIATIONS ARE NOT THE PROPER FORUM FOR DISCUSSIONS OF AGREED

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FORCE LEVELS, AND THAT THE MATTER SHOULD BE HANDLED AT A HIGHER POLITICAL LEVEL. PANAMA AGREED THAT THE MATTER REQUIRED NEGOTIATION AT SUCH A LEVEL. BOTH SIDES RESERVED ON THE POINT, PENDING THAT NEGOTIATION.

4. NON-INTERVENTION PRINCIPLE-(ARTICLE II). PANAMA LIFTED PARAGRAPH (1) FROM OUR ARTICLE ON GENERAL OBLIGATIONS AND BROADENED IT SLIGHTLY INTO A NEW ARTICLE II, WHICH WE HAVE

ACCEPTED WITH SOME REVISION.

5. JOINT COMMITTEE-(ARTICLE III). THE SCOPE OF THE JOINT COMMITTEE IS NOW LIMITED TO MATTERS SPECIFICALLY PROVIDED FOR OR REFERRED TO IT BY BOTH GOVERNMENTS; PANAMA WAS UNWILLING TO GIVE IT GENERAL AUTHORITY TO IMPLEMENT ALL PARTS OF THE SOFA. HOWEVER, THEY LATER AGREED TO GIVE THE JOINT COMMITTEE GENERAL AUTHORITY TO IMPLEMENT THE CRIMINAL JURISDICTION ARTICLE. WE WILL INSURE IN SUBSEQUENT NEGOTIATIONS THAT ALL OTHER MATTERS IMPORTANT FROM THE UNITED STATES STANDPOINT ARE COVERED BY A JOINT COMMITTEE REFERENCE.

6. USE OF DEFENSE SITES-ARTICLE IV. PANAMA INSISTED THAT THE JOINT TRAINING AREAS BE UNDER THEIR "CONTROL", AND THIS REFERENCE IN THE TEXT IS THEREFORE UNAGREED PENDING RESOLUTION OF THE LAND AND WATER ISSUE. IN ORDER TO RETAIN THE NON-RESTORATION AND RESIDUAL VALUE PROVISIONS, WE AGREED TO DELETE PARAGRAPH 3 OF THE UNITED STATES DRAFT REGARDING REQUESTS FOR USE OF ADDITIONAL TRAINING AREAS, WITHOUT PREJUDICE TO RIGHT TO MAKE SUCH REQUESTS.

UNITED STATES RESPONSIBILITY FOR CONTROL OF ACCESS TO DEFENSE SITES IS RETAINED, TOGETHER WITH A STIPULATION THAT SIGNS OUTSIDE THE DEFENSE SITES WILL BE ERECTED UNDER THE AUTHORITY OF PANAMA, IN SPANISH AND ENGLISH, AT THE REQUEST OF THE UNITED STATES FORCES.

WE HAVE ACCEPTED A PROVISION TO RESPECT THE TREATY OF TLATELOLCO, IN RETURN FOR PANAMA'S COMMITMENT TO AUTHORIZE TRANSIT AND TRANSPORT OF NUCLEAR WEAPONS, THROUGH A SEPARATE CONFIDENTIAL EXCHANGE OF NOTES.

A "GRANDFATHER" PROVISION FOR CONTINUING USE OF RIGHTS OF WAY AND EASEMENTS HAS BEEN ACCEPTED, BUT WILL BE TRANSFERRED TO ARTICLE XIV ON SERVICES AND FACILITIES.

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8. FLAGS-(ARTICLE V). PANAMA ACCEPTED THE UNITED STATES PROPOSAL THAT BOTH FLAGS SHALL FLY WITHIN THE DEFENSE SITES, IN EXCHANGE FOR A STIPULATION THAT OUTSIDE THE SITES ONLY THE PANAMANIAN FLAG WILL FLY. THE NEGOTIATING RECORD IS CLEAR THAT PANAMA WILL BE RESPONSIBLE FOR ERECTING FLAGPOLES OUTSIDE THE SITES, AND TO FLY THEIR FLAG THERE. PANAMA ALSO UNDERSTANDS THE UNITED STATES POSITION THAT THE UNITED STATES FLAG SHOULD FLY ON CERTAIN CANAL ADMINISTRATION LANDS, AND AGREED THAT THE MATTER WILL BE DISCUSSED LATER.

7. CRIMINAL JURISDICTION-(ARTICLE VI). AT FIRST, THIS WAS EXTREMELY SLOW GOING. ESCOBAR, WHO IS REPORTED TO HAVE HAD EXTENSIVE PRACTICE IN CRIMINAL LAW, APPEARS TO HAVE A KEEN UNDERSTANDING OF THE PANAMANIAN CRIMINAL JUSTICE SYSTEM.

WITH ONE EXCEPTION, AGREEMENT WAS EVENTUALLY REACHED ON THE ENTIRE CIRCLE. THE BASIC JURISDICTION FORMULA HAS BEEN MAINTAINED, WITH WAIVER PROVISIONS REDRAFTED TO REDUCE THE SUBSTANCE OF THE UNITED STATES POSITION TO ONE RECIPROCAL PARAGRAPH. THE UNITED STATES NEGOTIATORS AGREED TO INCLUDE REFERENCE TO CIRCUMSTANCES UNDER WHICH WE WOULD NOT NORMALLY ISSUE OFFICIAL DUTY CERTIFICATES IN RETURN FOR PANAMA'S AGREEMENT TO DROP A DEFINITION OF OFFICIAL DUTY WHICH THEY HAD INSISTED ON PLACING IN ARTICLE I. IMPORTANTLY, THE UNITED STATES LIST OF TRIAL SAFEGUARDS WAS ACCEPTED AS A NEW ANNEX, WITH REFERENCES TO PERTINENT PROVISIONS OF THE PANAMANIAN CONSTITUTION AND JUDICIAL CODE, SUBJECT ONLY TO SOME TRANSLATION DIFFICULTIES WHICH PANAMA HAS PLEDGED TO COMPLETE PRIOR TO THE NEXT ROUND OF TALKS.

CUSTODY PROVISIONS CREATED SIGNIFICANT PROBLEMS, AND THE AGREED DRAFT STATES THAT PANAMA WILL GRANT US CUSTODY IN ALL BUT NON-BAILABLE OFFENSES, AND WILL GIVE SYMPATHETIC CONSIDERATION TO REQUESTS FROM UNITED STATES AUTHORITIES FOR CUSTODY IN THOSE CASES. A UNITED STATES OBLIGATION TO ASSURE THE PRESENCE OF THE ACCUSED WILL SERVE IN LIEU OF PANAMANIAN BAIL REQUIREMENTS.

OTHER PROVISIONS OF THE UNITED STATES REMAIN LARGELY INTACT. ONE IMPORTANT EXCEPTION IS PARA 14 OF THE UNITED STATES DRAFT. THE PANAMANIAN NEGOTIATORS WERE UNDER INSTRUCTIONS TO RESIST THIS ARTICLE, UNDER THE MISAPPREHENSION THAT ALL LAND OVER WHICH THE
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UNITED STATES IS TO EXERCISE CONTROL OF USE WOULD BE A DEFENSE SITE. WHEN THIS WAS CLARIFIED, THEY SAID THEY FAVORED MOVING PARA 14(B) TO THE GENERAL OBLIGATION ARTICLE, WHICH WE ACCEPTED, BUT THEY WERE STILL UNABLE TO AGREE TO SPECIFIC LANGUAGE.

8. BARRINGER AND SMITH ARE RETURNING TO WASHINGTON AND WILL BRING THE TEXT AS NEGOTIATED SO FAR. WE HAVE PROPOSED THAT THE NEXT ROUND TALKS BE HELD IN WASHINGTON, BEGINNING ON MONDAY, JANUARY 27. PANAMA HAS ACCEPTED.
JORDEN

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